

Time of alleged violation: 9:42 AM

Date of alleged violation: September 13, 2019

Place of alleged violation: Iowa City, Iowa

Names of government employees/officials involved:

Susan Dulek, Assistant City Attorney, City of Iowa City

Derek Frank, Public Information Officer, Iowa City Police Department

Name of government entity involved:

City of Iowa City

Alleged violation of:

Public records law

Description of alleged violation:

On September 3rd, 2019, I filed a public records request with the Iowa City Police Department (attached, "*FOI request on ICPD, Ring (Aleksey Gurtovoy).pdf*"), requesting an opportunity to inspect or obtain copies of all public records concerning, related to, or mentioning any relationship between the Iowa City Police Department and Ring, Inc., a home security and smart home company. In the request, I specifically asked that any records that exist in electronic form be provided in electronic format.

On September 13th, 2019 at 9:42 AM, Susan Dulek, Assistant City Attorney for the City of Iowa City, sent me the following email:

Mr. Gurtovoy:

This is in response to your open records request to Derek Frank dated Sept. 3. The City charges \$.15/page and there are approximately 400 pages of emails and thus the cost will be approximately \$60.000. Please let me know if you would like for me to provide copies. The City will not waive the fee.

Sue Dulek

I replied, asking for clarification on whether \$.15/page cost is for paper or electronic records, and reiterated that I would prefer to get the records electronically. Dulek replied with the following:

Sort of both. We print the emails, scan them, and then email them.

I asked Dulek for the rationale for doing so, pointing out that this practice is likely in violation of §22.3A, subsection 2, paragraph d of the Iowa Code, which specifically says that *"An electronic public record shall be made available in the format in which it is readily accessible to the government body if that format is useable with commonly available data processing or database management software."*

Dulek replied that *"The emails are not readily accessible"* because *"I reviewed them to see if there were emails subject to the attorney-client privilege or any information in an email string that was confidential and needed to be redacted."*

I disagree with the Assistant City Attorney's characterization of emails as not "readily accessible" simply because she had to review them for redactions. The Iowa Code clause in question is, in part, formulated to prevent charging a requestor for unnecessary record conversions and/or copies. Under Dulek's interpretation, the clause would become meaningless because a government entity *always* has to review requested records before it releases them, therefore no records can be considered "readily accessible." The technological means to review emails electronically are mainstream, and are just as straightforward as the paper route. Email redaction can also be easily done electronically by exporting the selected emails to PDF and using PDF redaction capabilities present in Adobe Acrobat, the de-facto standard for legal document processing. The City chose to do the review using the paper route in direct contradiction of the aforementioned clause and contrary to the original public records request, while asking the requestor to bear the cost of that decision.

It's also worth noting that unnecessary "analogization" of natively electronic records such as emails inevitably withholds part of the requested information. For example, attached (*"Sue Dulek-09-19-2019.pdf"*) is the Assistant City Attorney's reply to me that I printed on a physical sheet of paper, scanned and saved as a PDF image — the same process that the City subjected the electronic records that I specifically requested to receive in electronic format. It's not possible to tell from the printout, but:

1. The email originated from a server named CityMail12.civic.iowa-city.org with the IP address of 10.160.50.20 that is running Microsoft SMTP Server with the MAPI ID 15.01.1591.017, and is protected by a secure email gateway from Mimecast;
2. The email was sent using 128-bit TLS 1.2 cryptographic protocol, and took 6 seconds to deliver;
3. The email was created on 9/19/2019 at 1:35:24 PM CDT, has been assigned a message ID 6bf439228f044340a1a806a0eaabc6de@iowa-city.org, was sent as a reply to a previous email message with message ID 5d8134d6e40a2b4c02000015@polymail.io and has a thread index AdVswYf8maMat1tqSmGyG7J9qE/ksQA/j7gAAFZJLPA=;

4. The scanned PDF image attached to the email, "8-21-19 Logan email attachment.pdf", was produced using Konica Minolta Bizhub C454e multifunction printer/fax/copier/scanner on Thu, 19 Sep 2019 18:34:57 GMT, modified on Thu, 19 Sep 2019 17:34:14 GMT, and has a size of 19,515 bytes.

This information is available to me because I was able to examine the original email message in its native electronic format. The attached PDF image of the corresponding email printout does not contain any of this information. By converting the requested electronic records in a readily accessible electronic format to a PDF image of an analog printout, the City has withheld record metadata that:

1. By any reasonable definition is a part of the requested records; and
2. Is crucial for confirming the source and authenticity of emails, reliably organizing emails into threads, and verifying the completeness of the released records archive.

Also attached ("*Ring's Party at IACP.pdf*") is a PDF scan of an analog printout of an email message the City released to me as a part of this public records request. Among other information, the original email contains an embedded HTML link tagged with the text "Event Details". The analog printout contains the image of the text, but the link itself has been lost. Thus, by converting the requested electronic records in a readily accessible electronic format to a PDF image of an analog printout, the City has withheld HTML links embedded in the emails that:

1. By any reasonable definition are a part of the requested records; and
2. Are a crucial piece of any electronic communication.

Last but not least, also attached ("*Ring marketing graphics.pdf*") is a PDF scan of a printout of an email attachment also released to me as a part of this public records request. This attachment is an image that was too large to fully fit on a physical sheet of paper, and therefore only a part of the image is visible in the printout. A part of the image is not the same as the whole image. It's impossible to know what information has been cut out from the printout. Thus, by converting the requested electronic records in a readily accessible electronic format to a PDF image of an analog printout, the City has withheld a part of the requested information.

I replied to Dulek on September 15th, voicing my disagreement with her contrived interpretation of "readily accessible" and respectfully asking the City to waive the requested paper copies fees. The City declined to waive the fees. After paying the fees and receiving the analogized records, I followed up with the City asking to release six specific emails and the corresponding attachments in their native electronic format. The Assistant City Attorney had initially declined, and then complied only after I made it clear that by releasing the records as scanned printouts, the City is not only violating §22.3A,

subsection 2, paragraph d of the Iowa Code, but is also withholding crucial parts of the requested information. The City has never released the rest of the requested records in their original, readily accessible electronic format, nor have they refunded the paper copies fees.

A complete archive of my communication with the City is attached (*"Email communication.zip"*).

What would you like the board to do?

I'd like for the City of Iowa City to formally repeal their apparent established practice of unnecessarily converting readily accessible, electronic formats such as email to electronically scanned paper printouts when other means of document review and redaction that preserve the original format and/or keep the records digital and prevent the loss of requested information are widely available. If the City lacks mainstream, widely available technological means to comply with the spirit and letter of the Iowa Code, the City should take whatever steps are necessary to bring their processes into compliance.

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